

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Alex D. Poon

Examiner: Behrang Badii

Serial No.: 09/491,703

Group Art Unit: 3694

Filed: January 26, 2000

Docket: 2043.007US1

For: METHOD AND APPARATUS FOR FACILITATING USER SELECTION OF A  
CATEGORY ITEM IN A TRANSACTION

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in response to the Notice of Panel Decision from Pre-Appeal Brief Review mailed on August 28, 2008 and further in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on June 26, 2008, appealing from the Final Rejection of claims 9, 11-16, 25, 27-32, 41, 43-48, 58-59, 62-63, 66-67, 71, 73 and 75 of the above-identified application, as set forth in the Final Office Action mailed on March 26, 2008.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$510.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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## **1. REAL PARTY IN INTEREST**

The real party in interest of the above-captioned patent application is the assignee, EBAY INC., as evidenced by the assignment from the inventors recorded January 26, 2000 at Reel 010524, Frame 0212 with the U.S. Patent Office.

## **2. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

### **3. STATUS OF THE CLAIMS**

The present application was filed on January 26, 2000 with claims 1-55. In the response to the Non-Final Office Action mailed March 14, 2001, Appellants added claims 56-69. In response to the Final Office Action mailed August 14, 2001, Appellants added claims 70-76 in a Continued Prosecution Application. In response to the Non-Final Office Action mailed January 26, 2006, Appellants canceled claims 1-8, 17-24, 33-40, 49-57, 60-61, 64-65, 68-70, 72, 74, and 76. In response to the Non-Final Office Action mailed on October 19, 2007, Appellants canceled claims 10, 26 and 42. In response to the Final Office Action mailed March 26, 2008, Appellants canceled claims 49-57. Claims 9, 11-16, 25, 27-32, 41, 43-48, 58-59, 62-63, 66-67, 71, 73 and 75 stand twice rejected, remain pending and are the subject of the present Appeal.

#### **4. STATUS OF AMENDMENTS**

No amendments have been made subsequent to the Final Office Action dated May 26, 2008.

## **5. SUMMARY OF CLAIMED SUBJECT MATTER**

### **INDEPENDENT CLAIM 9**

Aspects of the present inventive subject matter may include, but are not limited to, a method to facilitate category selection by a user in a computerized transaction. The method may comprise providing multiple category entries to be displayed for the user in a category field within a display window (e.g., page 4, lines 2-3; page 55, lines 38-41; page 8, lines 14-17; and FIG. 2, callout 221). The multiple category entries may be used to categorize an item in the computerized transaction (e.g., page 4, lines 2-3, page 56, lines 24-28; and FIG. 4, callouts 405, 410, 420, and 430). The method may detect selection by the user of a category entry of the category entries and responding to the detection of the selection of the category entry (e.g., page 4, lines 5-8; page 6, lines 1-2; page 10, lines 12-14; page 56, lines 11- 28; and page 57, lines 3-23). The method may provide multiple subcategory entries that may be hierarchically related to the selected category entry within a category hierarchy data structure (e.g., page 4, lines 8-10; page 55, lines 30-38; and FIG. 4, callouts 45 and 460), to be hierarchically displayed for the user in at least one subcategory field within the display window (e.g., page 55, line 38 to page 56, line 13). Concurrently with the category field, the plurality of subcategory entries may be used to categorize the item in the transaction (e.g., page 55, lines 30-37; and page 56, line 22 to page 57 lines 19). The method may also provide a category number associated with the selected category entry to be displayed for the user in the display window (e.g., page 55, line 34-37; page 567, lines 9-13; page 56, line 24 to page 57, line 2; Page 57, line 26 to page 58, line 23; and FIG. 5, callout 535)

### **INDEPENDENT CLAIM 25**

Aspects of the present inventive subject matter may include, but are not limited to, a computer readable medium (e.g., FIG. 2, callouts 207) containing executable instructions (e.g., pages 10, line 20 to page 55, line 15) which, when executed in a processing system (e.g., FIG. 2, callout 202), cause the system to perform a method to facilitate category selection by a user in a computerized transaction.

The method may comprise providing multiple category entries to be displayed for the user in a category field within a display window (e.g., page 4, lines 2-3; page 55, lines 38-41; page 8, lines 14-17; and FIG. 2, callout 221). The multiple category entries may be used to categorize an item in the computerized transaction (e.g., page 4, lines 2-3, page 56, lines 24-28; and FIG. 4, callouts 405, 410, 420, and 430). The method may detect selection by the user of a category entry of the category entries and responding to the detection of the selection of the category entry (e.g., page 4, lines 5-8; page 6, lines 1-2; page 10, lines 12-14; page 56, lines 11-28; and page 57, lines 3-23). The method may provide multiple subcategory entries that may be hierarchically related to the selected category entry within a category hierarchy data structure (e.g., page 4, lines 8-10; page 55, lines 30-38; and FIG. 4, callouts 45 and 460), to be hierarchically displayed for the user in at least one subcategory field within the display window (e.g., page 55, line 38 to page 56, line 13). Concurrently with the category field, the plurality of subcategory entries may be used to categorize the item in the transaction (e.g., page 55, lines 30-37; and page 56, line 22 to page 57 lines 19). The method may also provide a category number associated with the selected category entry to be displayed for the user in the display window (e.g., page 55, line 34-37; page 56, lines 9-13; page 56, line 24 to page 57, line 2; Page 57, line 26 to page 58, line 23; and FIG. 5, callout 535)

#### INDEPENDENT CLAIM 41

41. An article of manufacture comprising a program storage medium (e.g., FIG. 2, callout 207) readable by a computer (e.g., FIG. 2, callout 200) and tangibly embodying at least one program of instructions (e.g., pages 10, line 20 to page 55, line 15) executable by said computer to perform a method to facilitate category selection by a user in a computerized transaction.

The method may comprise providing multiple category entries to be displayed for the user in a category field within a display window (e.g., page 4, lines 2-3; page 55, lines 38-41; page 8, lines 14-17; and FIG. 2, callout 221). The multiple category entries may be used to categorize an item in the computerized transaction (e.g., page 4, lines 2-3, page 56, lines 24-28; and FIG. 4, callouts 405, 410, 420, and 430). The method may detect selection by the user of a category entry of the category entries and responding to the detection of the selection of the category entry (e.g., page 4, lines 5-8; page 6, lines 1-2; page 10, lines 12-14; page 56, lines 11-



28; and page 57, lines 3-23). The method may provide multiple subcategory entries that may be hierarchically related to the selected category entry within a category hierarchy data structure (e.g., page 4, lines 8-10; page 55, lines 30-38; and FIG. 4, callouts 45 and 460), to be hierarchically displayed for the user in at least one subcategory field within the display window (e.g., page 55, line 38 to page 56, line 13). Concurrently with the category field, the plurality of subcategory entries may be used to categorize the item in the transaction (e.g., page 55, lines 30-37; and page 56, line 22 to page 57 lines 19). The method may also provide a category number associated with the selected category entry to be displayed for the user in the display window (e.g., page 55, line 34-37; page 56, lines 9-13; page 56, line 24 to page 57, line 2; Page 57, line 26 to page 58, line 23; and FIG. 5, callout 535)

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to each of the appended claims and its legal equivalents for a complete statement of the invention.

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

### *§103 Rejection of the Claims*

Claims 9, 11-15, 25 and 41-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Greef et al. (U.S. Patent No. 6,397,221, hereinafter “Greef”).

Claims 16, 32, 48, 58-59, 62-63, 66-67, 71, 73 and 75 were rejected under 35 U.S.C. §103(a) as being unpatentable over Greef in view of Linden et al. (U.S. Publication No. 2005/0071581A1, hereinafter “Linden”).

## **7. ARGUMENT**

### **§103 Rejection of the Claims**

Claims 9, 11-15, 25 and 41-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Greef et al. (U.S. Patent No. 6,397,221, hereinafter; “Greef”).

#### ***A) The Applicable Law***

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.<sup>1</sup>

#### ***B) Discussion of the rejection of claims 9, 25, and 41***

For the reasons set forth below, Appellant respectfully submits that the rejection is in error and the identified claims are non-obvious over Greef and are therefore allowable.

Claim 9 recites, in pertinent part:

“responding to said detection of said selection of said category entry, providing a plurality of subcategory entries . . . to be hierarchically displayed for said user in at least one subcategory field within said display window, . . . said plurality of subcategory entries being used to categorize said item in said transaction.”

(Emphasis added throughout)

The Final Office Action, at page 3, alleges that this limitation is disclosed by Greef at col. 7, lines 31-44, col. 29, line 40 – col. 30, line 60, and col. 31, lines 18-59. Appellant respectfully disagrees with the allegation. Greef in the cited passages merely discusses preparation of a category register that lists the product categories and subcategories and creating category and product frames:

“As shown in FIG. 20, the second form of the method . . . includes a step . . . at which the program prompts the user for identification of the tabular data to be incorporated into frame-based hierarchical form. . . . In response, the user would identify the source of tabular data of table 400 in conventional fashion; e.g. by designating a file name and path for locating the file. . . . the method reviews the tabular data of table 400 and extracts information for building a series of registers that are subsequently used in formulating the frame-based, hierarchical structure

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<sup>1</sup> *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)

for the data. Particularly, the method prepares a Category register that lists the product categories and subcategories for the data . . . In addition to creating a categories register, the method at step 506 also creates a Products register which list the products of the respective rows of table 400, using a suitable identifying attribute; e.g., Model Name, the attribute value identifying the respective products.” 2

“Following analysis of the tabular data and generation of the respective data registries . . . the program advances to Create Category and Product Frames step 506 at which the program embodying the method begins development of the frame-based hierarchical structure to accommodate the table 400 product data. . . . Additionally, the program at step 506 also establishes a subordinate level 438 beneath category frame 436, for subcategory frames . . . Following, generation of an initial form of hierarchical structure 434 at step 506, processing advances to Create "IS A" Relationship step 508 at which the program continues development of structure 434 by identifying the respective hierarchical associations for the table 400 products relative to the category-subcategory structure. To accomplish this the program refers to the Relationships register, and identifies the associations included there.” 3

Clearly, the cited passages do not relate the claimed feature of “responding to said detection of said selection of said category entry, providing a plurality of subcategory entries and displaying for said user in at least one subcategory field within said display window, . . . said plurality of subcategory entries being used to categorize said item in said transaction.” In contrast, the cited passages, state that “the program prompts the user for identification of a tabular data,” and “the user would identify the source of tabular data by designating a file name and path for locating the file.” Greef’s method “reviews the tabular data” and “extract information for building a series of registers. . . particularly, the method prepares Category register . . . Product register.” The method “begins development of the frame-based hierarchical structure to accommodate the table 400 product data . . . also establishes a subordinate level 438 beneath category frame 436, for subcategory frames.”

However, none of the steps described in the passages amounts to responding to said detection of said selection of said category entry, providing a plurality of subcategory entries and displaying for said user in at least one subcategory field within said display window, . . .

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2 Greef, col. 29, line 40 – col. 30, line 60

3 Greef, col. 31, lines 18-59

said plurality of subcategory entries being used to categorize said item in said transaction, as recited in claim 9. Accordingly, Greef does not teach or suggest the limitation of “*responding to said detection of said selection of said category entry, providing a plurality of subcategory entries . . . to be hierarchically displayed for said user in at least one subcategory field within said display window, . . . said plurality of subcategory entries being used to categorize said item in said transaction*,” as recited in claim 9. The Final Office Action further asserts, “Greef did not expressly disclose a transaction, since this is an e-commerce shopping system and method, a transaction is obviously present.” Appellant respectfully disagrees with the assertion and submits that Greef is a system and method “for creating and or modifying the organizational structure and data content of a frame-based, hierarchical product database with the use of tabularly arranged product data.” (Abstract)

Furthermore, in rejecting claim 9, when discussing the claim limitation of “providing a category number associated with said selected category entry to be displayed for said user in said display window,” the Final Office Action relies on Greef’s Abstract, and portions of the above cited passages. As pointed out in the Appellant’s response to the Final Office Action, at page 12, Appellant respectfully submits that neither the abstract nor any of the cited passages provides category number to be displayed for user in display window. Accordingly, the claim 9 limitation of “*providing a category number associated with said selected category entry to be displayed for said user in said display window*” is not described or shown in Greef.

As such, Greef fails to teach or suggest each and every element of claim 9. Therefore, Appellant respectfully submits that there are substantial differences between what is claimed and what the Office Action contends to be shown in Greef. Because the Greef does not show all of the elements of the claimed subject matter of claim 1, those differences are significant and non-obvious to a person of ordinary skill in the art at the time the application was filed. Thus, claim 9 and its dependent claims 11-15 are not rendered obvious by Greef and are allowable.

The same arguments as presented with respect to claim 9 are also applicable to a consideration of independent claims 25 and 41. As such, at least for the reasons discussed above with respect to claim 9, claims 25 and 41 and dependent claims 43-47 are not rendered obvious by Greef and are, thus, allowable.

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Claims 16, 32, 48, 58-59, 62-63, 66-67, 71, 73 and 75 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Greef in view of Linden et al. (U.S. Publication No. 2005/0071581A1, hereinafter; "Linden").

Claims 16, 32, 48, 58-59, 62-63, 66-67, 71, 73 and 75 are dependent on independent claims 9, 25, and 41. Thus, they are deemed to include every limitation of the claims they are dependent upon. The difference between claims 9, 25, and 41 and the disclosure in Greef is not remedied by the disclosure of Linden. Thus, Appellant respectfully submits that, at least for the reasons noted above, claims 16, 32, 48, 58-59, 62-63, 66-67, 71, 73 and 75 are not rendered obvious by Greef. Therefore, these claims are also allowable.

Appellant respectfully requests that the claim rejections under 35 U.S.C. § 103(a) be reversed.

**SUMMARY**

For the reasons argued above, claims 9, 11-15, 25 and 41-47 were not properly rejected under 35 U.S.C. § 103(a) for being unpatentable over Greef. Nor were claims 16, 32, 48, 58-59, 62-63, 66-67, 71, 73 and 75 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Greef in view of Linden. It is respectfully submitted that the arts cited do not render the claims obvious and that the claims are patentable over the cited documents. Accordingly, reversal of the rejections and allowance of the pending claims is respectfully requested.

Respectfully submitted,

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By

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29 day of September 2008.

CHRIS BRETZ

Name

[Signature]  
Signature

## **8. CLAIMS APPENDIX**

9. A method to facilitate category selection by a user in a computerized transaction, said method comprising:

providing a plurality of category entries to be displayed for said user in a category field within a display window, said plurality of category entries being used to categorize an item in said computerized transaction;

detecting selection by said user of a category entry of said plurality of category entries; responding to said detection of said selection of said category entry, providing a plurality of subcategory entries being hierarchically related to said selected category entry within a category hierarchy data structure, to be hierarchically displayed for said user in at least one subcategory field within said display window, concurrently with said category field, said plurality of subcategory entries being used to categorize said item in said transaction; and

providing a category number associated with said selected category entry to be displayed for said user in said display window.

11. The method according to claim 9, wherein said category field comprises twelve category entries in alphabetical order.

12. The method according to claim 9, further comprising subsequently detecting input of said category number from said user and, responsive to said detection of said input, providing said associated category entry to be displayed for said user in said category field.



13. The method according to claim 9, wherein said at least one subcategory field further comprises

- a first subcategory field containing a plurality of first subcategory entries being hierarchically related to said category entry of said plurality of category entries selected by said user;
- a second subcategory field containing a plurality of second subcategory entries being hierarchically related to a selected first subcategory entry of said plurality of first subcategory entries; and
- a third subcategory field containing a plurality of third subcategory entries being hierarchically related to a selected second subcategory entry of said plurality of second subcategory entries.

14. The method according to claim 9, wherein said category field and said at least one subcategory field are contained in graphically distinct areas within said display window.

15. The method according to claim 14, wherein said at least one subcategory field is substantially adjacent to said category field.

16. The method according to claim 14, wherein said category field and said at least one subcategory field are page mark-up language documents.

25. A computer readable medium containing executable instructions which, when executed in a processing system, cause said system to perform a method to facilitate category selection by a user in a computerized transaction, said method comprising:

- providing a plurality of category entries to be displayed for said user in a category field within a display window, said plurality of category entries being used to categorize an item in said computerized transaction;
- detecting selection by said user of a category entry of said plurality of category entries;

responsive to said detection of said selection of said category entry, providing a plurality of subcategory entries being hierarchically related to said selected category entry within a category hierarchy data structure, to be hierarchically displayed for said user in at least one subcategory field within said display window, concurrently with said category field, said plurality of subcategory entries being used to categorize said item in said transaction; and  
providing a category number associated with said selected category entry to be displayed for said user in said display window.

27. The computer readable medium according to claim 25, wherein said category field comprises twelve category entries in alphabetical order.

28. The computer readable medium according to claim 25, wherein said method further comprises subsequently detecting input of said category number from said user and, responsive to said detection of said input, providing said associated category entry to be displayed for said user in said category field.

29. The computer readable medium according to claim 25, wherein said at least one subcategory field further comprises

- a first subcategory field containing a plurality of first subcategory entries being hierarchically related to said category entry of said plurality of category entries selected by said user;
- a second subcategory field containing a plurality of second subcategory entries being hierarchically related to a selected first subcategory entry of said plurality of first subcategory entries; and
- a third subcategory field containing a plurality of third subcategory entries being hierarchically related to a selected second subcategory entry of said plurality of second subcategory entries.

30. The computer readable medium according to claim 25, wherein said category field and said at least one subcategory field are contained in graphically distinct areas within said display window.

31. The computer readable medium according to claim 30, wherein said at least one subcategory field is substantially adjacent to said category field.

32. The computer readable medium according to claim 30, wherein said category field and said at least one subcategory field are page mark-up language documents.

41. An article of manufacture comprising a program storage medium readable by a computer and tangibly embodying at least one program of instructions executable by said computer to perform a method to facilitate category selection by a user in a computerized transaction, said method comprising:

- providing a plurality of category entries to be displayed for said user in a category field within a display window, said plurality of category entries being used to categorize an item in said computerized transaction;
- detecting selection by said user of a category entry of said plurality of category entries selected by said user;
- responsive to said detection of said selection of said category entry, providing a plurality of subcategory entries being hierarchically related to said selected category entry within a category hierarchy data structure, to be hierarchically displayed for said user in at least one subcategory field within said display window, concurrently with said category field, said plurality of subcategory entries being used to categorize said item in said transaction; and
- providing a category number associated with said selected category entry to be displayed for said user in said display window.

43. The article of manufacture according to claim 41, wherein said category field comprises twelve category entries in alphabetical order.

44. The article of manufacture according to claim 41, wherein said method further comprises subsequently detecting input of said category number from said user and, responsive to said detection of said input, providing said associated category entry to be displayed for said user in said category field.

45. The article of manufacture according to claim 41, wherein said at least one subcategory field further comprises

- a first subcategory field containing a plurality of first subcategory entries being hierarchically related to said category entry of said plurality of category entries selected by said user;
- a second subcategory field containing a plurality of second subcategory entries being hierarchically related to a selected first subcategory entry of said plurality of first subcategory entries; and
- a third subcategory field containing a plurality of third subcategory entries being hierarchically related to a selected second subcategory entry of said plurality of second subcategory entries.

46. The article of manufacture according to claim 41, wherein said category field and said at least one subcategory field are contained in graphically distinct areas within said display window.

47. The article of manufacture according to claim 46, wherein said at least one subcategory field is substantially adjacent to said category field.

48. The article of manufacture according to claim 46, wherein said category field and said at least one subcategory field are page mark-up language documents.

58. The method according to claim 9, further comprising:  
detecting selection by said user of at least one subcategory entry of said plurality of  
subcategory entries.

59. The method according to claim 58, further comprising:  
responsive to said detection of said selection of said at least one subcategory entry,  
providing a category number associated with said selected category entry and said at  
least one selected subcategory entry to be displayed for said user in said display  
window.

62. The computer readable medium according to claim 25, wherein said  
method further comprises:  
detecting selection by said user of at least one subcategory entry of said plurality of  
subcategory entries.

63. The computer readable medium according to claim 62, wherein said  
method further comprises:  
responsive to said detection of said selection of said at least one subcategory entry,  
providing a category number associated with said selected category entry and said at  
least one selected subcategory entry to be displayed for said user in said display  
window.

66. The article of manufacture according to claim 41, wherein said method  
further comprises:  
detecting selection by said user of at least one subcategory entry of said plurality of  
subcategory entries.

67. The article of manufacture according to claim 66, wherein said method further comprises:

responsive to said detection of said selection of said at least one subcategory entry, providing a category number associated with said selected category entry and said at least one selected subcategory entry to be displayed for said user in said display window.

71. The method according to claim 9, wherein said plurality of category entries are maintained in said category field within said display window and said plurality of subcategory entries are displayed in said at least one subcategory field within said display window, concurrently with said plurality of category entries.

73. The computer readable medium according to claim 25, wherein said plurality of category entries are maintained in said category field within said display window and said plurality of subcategory entries are displayed in said at least one subcategory field within said display window, concurrently with said plurality of category entries.

75. The article of manufacture according to claim 41, wherein said plurality of category entries are maintained in said category field within said display window and said plurality of subcategory entries are displayed in said at least one subcategory field within said display window, concurrently with said plurality of category entries.

## **9. EVIDENCE APPENDIX**

None.

## **10. RELATED PROCEEDINGS APPENDIX**

None.